



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: MOLLY CARPENTER
Child and Maternal Health Division
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel to DMAS

DATE: May 17, 2007

SUBJECT: Final Exempt Regulations to Administer Hearing Aid Services for Children

I have reviewed the attached final exempt regulation that will specify that hearing aid services are reimbursed as an Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") service for all individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids. In addition, the regulations will specify reimbursement rates for hearing aid services. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the final exempt regulation and if it comports with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The amendments to the regulations incorporate changes, required by Chapter 847, Item 302 (EEE) of the 2007 Acts of the Assembly, which states that “The DMAS shall modify reimbursement for pediatric hearing aids to reimburse the actual cost of the device within the limits set by the Department, plus provide a fixed rate dispensing fee and fitting fee. These rate changes shall take effect January 1, 2008.” Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-3890.

cc: Kim F. Piner
Senior Assistant Attorney General